



# CITY OF SNOHOMISH

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## NOTICE OF REGULAR MEETING

### PLANNING COMMISSION

Carnegie Building  
105 Cedar Avenue

**WEDNESDAY**  
**December 7, 2016**  
**6:00 p.m.**

**NOTE**  
**DIFFERENT**  
**LOCATION**

1. **CALL TO ORDER**
2. **FLAG SALUTE**
3. **ROLL CALL**
4. **APPROVAL OF AGENDA ORDER**
5. **APPROVAL** of the minutes of the November 2, 2016, regular meeting (*P. 1*)
6. **GENERAL PUBLIC COMMENTS** on items not on the agenda
7. **ACTION ITEM** – Election of Chair and Vice Chair for 2017 (*P. 3*)
8. **DISCUSSION ITEMS**
  - a. Planning Commission Bylaws (*P. 7*)
  - b. Annual Report (*P. 15*)
  - c. Development Agreements Code Amendment (*P. 17*)
  - d. Fences in the Right-of-Way Code Amendment (*P. 19*)
9. **DIRECTOR'S REPORT**
10. **ADJOURNMENT**

**NEXT MEETING:** The next regular meeting is scheduled for **Wednesday, January 4, 2017**, at 6:00 p.m. in the George Gilbertson Boardroom, Snohomish School District Resource Center, 1601 Avenue D, Snohomish, WA 98290.



## **AGENDA ITEM 5**

### **CITY OF SNOHOMISH REGULAR MEETING OF THE PLANNING COMMISSION MEETING MINUTES November 2, 2016**

1. **CALL TO ORDER:** The regular meeting of the Planning Commission was opened by Chair Laura Scott at 6:00 p.m. in the George Gilbertson Boardroom, 1601 Avenue D. The assemblage joined in the flag salute and roll was taken.

#### **PLANNING COMMISSION**

##### **MEMBERS PRESENT:**

Christine Wakefield Nichols  
Gordon Cole  
Laura Scott, Chair  
Hank Eskridge  
Steve Dana

##### **STAFF:**

Brooke Eidem, Associate Planner  
Glen Pickus, Planning Director  
Katie Hoole, Permit Coordinator

##### **OTHERS PRESENT:**

Tom Hamilton, City Council Liaison  
5 audience members

##### **MEMBERS ABSENT:**

Terry Lippincott  
Van Tormohlen

2. **APPROVE** the minutes of the October 5, 2016, regular meeting

Mr. Cole moved to approve the October 5, 2016, minutes as written; Mr. Dana seconded, and the motion was approved, 5-0.

3. **CITIZEN COMMENTS** on items not on the agenda

4. **PUBLIC HEARING** – 2016 Amendment to the Comprehensive Plan

Ms. Scott opened the public hearing to consider an amendment to the Comprehensive Plan to change the land use designation at 2501 Bickford Avenue from Business Park to High Density Residential.

Ms. Eidem led the staff presentation, explaining the Comprehensive Plan amendment process, nature of the proposal, and criteria for approval of an amendment.

Mr. Eskridge moved to close the public hearing and Mr. Cole seconded. The motion was approved, 5-0.

During Commission deliberations, Commissioner Cole asked the applicant how many dwelling units they expect to construct. Brian Kalab of Insight Engineering Co. responded from the audience that the exact number has not yet been determined and Ms. Eidem provided additional information about density limits for the site.

## **AGENDA ITEM 5**

Mr. Dana moved that the Planning Commission recommend approval of the Findings of Fact and Conclusions and Ordinance 2317. Ms. Wakefield Nichols seconded and the motion was approved, 5-0.

### **5. ADJOURN**

The meeting adjourned at 6:18 p.m.

Approved this 7<sup>th</sup> day of December, 2016

By: \_\_\_\_\_  
Commissioner Laura Scott, Chair

## **ACTION ITEM 7**

**Date:** December 7, 2016  
**To:** Planning Commission  
**From:** Glen Pickus, Planning Director  
**Subject:** Election of Officers

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**SUMMARY:** Pursuant to Snohomish Municipal Code (SMC) 2.16.060, each December the Planning Commission shall elect a Chair and a Vice Chair for the coming calendar year.

**BACKGROUND:** SMC 2.16.060 spells out when the election of officers shall take place and the eligibility rules for being the Commission's Chair and Vice Chair. The code does not prescribe the procedure to use for the elections.

All members of the Commission are eligible to serve as an officer, with the following exceptions:

- No member can serve more than two consecutive terms as Chair.
- No member can serve more than two consecutive terms as Vice Chair.
- No member can serve a combined four consecutive terms as Chair and Vice Chair.

Given these exceptions, Commissioner Laura Scott, who was Chair in 2015 and 2016, is ineligible to be elected to be Chair for 2017. However, she is eligible to be elected Vice Chair.

Commissioner Hank Eskridge, who was Vice Chair in 2015 and 2016, is ineligible to be elected to be Vice Chair for 2017. However, he is eligible to be elected Chair.

All other Commissioners are eligible to be elected to either position.

The newly elected Chair and Vice Chair will assume their duties on January 1, 2017.

**PROCEDURE:** The staff recommendation is for the Planning Director to conduct the election of officers as follows:

1. Planning Director calls for nominations. Nominations do not require a second.
2. Planning Director declares nominations closed when it appears no one else wishes to make any further nominations.
3. Voting will take place in the order the nominations were made. The Planning Director will ask for a show of hands of those supporting the first nominee then will repeat the procedure for all nominees.
4. As soon as one nominee receives four or more votes, the Planning Director will declare him/her the winner. If no nominee receives four or more votes, the Planning Director will call for nominations again and the process will be repeated until a single candidate receives four or more votes.

However, because the procedure for electing officers is not prescribed anywhere the Commission may choose any method it wants to elect its 2017 Chair and Vice Chair. The process can be as

### **ACTION ITEM 7**

described above or something completely different. If the Planning Director does not conduct the election then the current Chair should.

**RECOMMENDATION:** Conduct an election to select a Planning Commission Chair and Vice Chair for 2017.

**ATTACHMENT:** SMC 2.16.060 – Officers, Rules, Election of Officers, Records, and Expenses

## **ACTION ITEM 7**

### **SMC 2.16.060**

#### **Officers, Rules, Election of Officers, Records, and Expenses**

The Commission shall adopt rules and regulations for the conduct of its business, subject to the approval of the City Council. A majority of the membership shall constitute a quorum for the purpose of transacting business. Action by the Commission shall be by majority vote. A tie vote on a motion to approve shall constitute a failure of the motion.

Each December, the Planning Commission shall elect from among its members a chair and vice chair. Such officers shall occupy their respective offices beginning January 1<sup>st</sup> of the following year. Members serving part or all of a one-year term as chair or vice chair shall be eligible for election to one additional consecutive one-year term at that officer position, for a maximum of two consecutive one-year terms.

A commissioner elected to serve two, consecutive one-year terms as vice chair or chair would, the following year, be ineligible for election to that same officer position. Following one year of ineligibility, the commissioner would again be eligible for election to that same position.

A commissioner elected to serve two, consecutive one-year terms as vice chair or chair and then two, consecutive one-year terms in the other officer position (four consecutive year's total) would, the following year, be ineligible for election to any officer position. Following one year of ineligibility, the commissioner would again be eligible for election to either officer position.

The City Planner, or his duly authorized representative, shall serve as executive secretary of the Commission, and shall be responsible for all records. All meetings of the Board shall be subject to the Open Public Meetings Act. The Commission shall keep minutes of its proceedings and such minutes shall be kept on file in the office of the City Clerk.

The Planning Commission shall provide an annual report to the City Council on its activities for the previous year and make special reports as necessary in response to specific Council requests.

The City shall provide the Commission with necessary administrative support and expense budget as needed to perform the function described by this chapter.

**ACTION ITEM 7**



## **DISCUSSION ITEM 8a**

**Date:** December 7, 2016  
**To:** Planning Commission.  
**From:** Glen Pickus, Planning Director  
**Subject:** Bylaws

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**SUMMARY:** Bylaws are procedural rules that any board, commission, or group will find useful to regulate its normal activities to ensure consistency and fairness. Currently, the Planning Commission does not have bylaws despite the fact Snohomish Municipal Code (SMC) 2.16.060 states, “The Commission shall adopt rules and regulations for the conduct of its business, subject to approval of the City Council.”

**BACKGROUND:** In parliamentary procedure, the bylaws are generally the supreme governing document of the organization. They contain the most fundamental principles and rules regarding the nature of the organization. That said, the Commission’s bylaws are subservient to the Snohomish Municipal Code. Therefore, they may not conflict with any provisions of the code and in the case of the Planning Commission, specifically SMC 2.16 – Planning Commission.

The attached draft proposed bylaws are modeled after the City of Shoreline Planning Commission bylaws which are posted on the Municipal Research and Services Center’s website as an example of good bylaws and on the City of Mukilteo Planning Commission bylaws which the Planning Director helped update when he worked there.

**ANALYSIS:** The draft bylaws contain the typical sections most bylaws have.

- I. Purpose
- II. Membership
- III. Officers and Their Duties
- IV. Election of Officers
- V. Meetings, Rules of Meetings, and Voting
- X. Amendments

It also has some sections specific to the operations of a public body such as a Planning Commission.

- VI. Order of Business and Public Comment
- VII. Work Plan
- VIII. Conflict of Interest and Appearance of Fairness
- IX. Agenda Packet Delivery

The proposed bylaws have been reviewed for consistency with the SMC. Many of the bylaw provisions repeat or reference sections of the SMC. However, the draft bylaws also cover rules and issues not addressed by code. These include:

### **DISCUSSION ITEM 8a**

- Requirement that meetings be conducted generally following the procedures outlined in Roberts Rules of Order Newly Revised.
- Establishment of a set order of business for all meetings.
- Establishment of a consistent method for receiving public testimony.
- Requirement that the Planning Director provide the Commission with an annual work plan for their input and approval. The work plan is to be used as a scheduling and organizational tool but shall not be binding. Therefore, items can be dropped from the work plan if necessary and if unanticipated issues arise items can be added.
- Provisions for avoiding conflicts of interest and for ensuring an appearance of fairness.

**RECOMMENDATION:** The Commission should discuss the draft bylaws and provide direction to staff on revisions. Staff can then bring the revised bylaws back to the Commission in January for adoption. However, if the revisions are few and minor and if the Commission is comfortable doing so they can consider the following motion at the December meeting:

Motion to ADOPT the Planning Commission bylaws as presented [as discussed] and to forward them to the City Council for their approval; and that upon approval by the City Council the bylaws shall become effective.

**ATTACHMENT:** Proposed Draft Bylaws

## **DISCUSSION ITEM 8a**

### **DRAFT CITY OF SNOHOMISH PLANNING COMMISSION BYLAWS**

#### **ARTICLE I**

##### **PURPOSE**

The objectives, purposes, powers, and duties of the Planning Commission of the City of Snohomish are those set forth in Chapter 2.16 of the Snohomish Municipal Code (SMC). These bylaws are adopted pursuant to SMC 2.16.060 which states, "The Commission shall adopt rules and regulations for the conduct of its business, subject to the approval of the City Council."

#### **ARTICLE II**

##### **MEMBERSHIP**

- Section 1.** Members of the Planning Commission shall be appointed by the Mayor and confirmed by the City Council, without respect to political affiliations, consistent with the requirements of SMC 2.16.020.
- Section 2.** Members may be removed from the Planning Commission by the Mayor, with the approval of the City Council, for inefficiency, neglect of duty or malfeasance in office, consistent with the requirements of SMC 2.16.070.
- Section 3.** By a majority vote of the Planning Commission it may request the Mayor to remove or ask to resign a member from the Planning Commission as provided for in Section 2.
- Section 4.** Any Commissioner desiring to resign from the Planning Commission shall submit his/her resignation in writing to the Planning Director who will present it to the Chair and to the Mayor.

#### **ARTICLE III**

##### **OFFICERS AND THEIR DUTIES**

- Section 1.** The officers of the Planning Commission shall consist of a Chair and Vice-Chair.
- Section 2.** The Chair shall preside at all meetings and public hearings of the Planning Commission and have the duties conferred to the presiding officer as prescribed in Robert's Rules of Order Newly Revised.
- Section 3.** The Chair shall be one of the appointed members of the Commission. He or she shall have the privilege of discussing all matters before the Commission and of voting thereon. The Chair shall preside at all meetings of the Commission; may call special meetings of the Commission in accordance with the bylaws; sign documents of the Commission; and see that all actions of the Commission are properly taken and recorded.

## **DISCUSSION ITEM 8a**

Section 4. In the absence of the Chair, the Vice-Chair shall serve as presiding officer as described in Section 3. The Vice-Chair shall be an appointed member of the Commission. During the absence, disability, or disqualification of the Chair, the Vice-Chair shall exercise or perform all the duties and be subject to all the responsibilities of the Chair.

Section 5. The Vice-Chair shall succeed the Chair if the office is vacated before the term is completed, and shall serve the unexpired term of the vacated office.

### **ARTICLE IV ELECTION OF OFFICERS**

Section 1. Election of officers shall be conducted consistent with SMC 2.16.060. Such election shall take place at the December meeting. Elected officers shall assume their duties on January 1<sup>st</sup>. If there is no December meeting the election shall take place at the next meeting and officers shall assume their duties immediately upon election.

Section 2. The election of the Chair shall be conducted by the Planning Director who will initially seek nominations for Chair. Nominations do not require a second. The Planning Director will declare the nominations closed when it appears no one else wishes to make any further nomination.

After nominations are closed, voting for the Chair will take place in the order nominations were made. Voting will be made by raising hands. As soon as one nominee receives a majority (four) votes the Planning Director will declare him/her the winner. If none of the nominees receives a majority vote the Planning Director will call for nominations again and repeat the process until a single candidate receives a majority vote.

The election for Vice-Chair shall follow the same process as for the Chair.

Section 3. No member may serve more than two consecutive one-year terms as Chair. No member may serve more than two consecutive one-year terms as Vice-Chair. A member who has served four consecutive years as either Chair or Vice-Chair shall be ineligible for election to any officer position for one year. In any of the cases above, following one year of ineligibility a member becomes eligible for election to any officer position.

Section 4. In the event the office of the Chair is vacated mid-term, the Vice-Chair shall automatically succeed the Chair without an election. The then vacant office of the Vice-Chair shall be filled by election at the next regular meeting following the process described in Section 2 above.

Section 5. When a Chair or Vice-Chair assumes the office mid-term it will be as if they had served an entire term as regards eligibility at the next December election.

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### ARTICLE V MEETINGS, RULES OF MEETINGS, AND VOTING

Section 1. The Planning Commission shall hold regular meetings according to the following schedule:

First Wednesday of each month. Meetings shall begin at 6:00 p.m. Should a regular meeting day be a legal holiday, the scheduled meeting shall be postponed to the succeeding Wednesday, unless a majority of the Commission votes to select another day or to cancel the meeting.

Section 2. A majority of the membership of the Commission shall constitute a quorum. Action by the Commission shall be by a majority vote of all members who are present, provided a quorum is present. Voting may be by voice vote, a show of hands, or by roll call as determined by the Chair. A record of the vote shall be kept as part of the minutes.

Section 3. The current edition of Robert's Rules of Order Newly Revised shall provide the basis for meeting structure. Official decisions shall be made by motion and vote of the Commission.

Section 4. Each member shall have one vote. No proxies shall be allowed. Present members may abstain. The Chair may vote on any issue and shall vote in the event of a tie. No action is taken if the Chair votes and the tie continues. A majority vote shall carry.

Section 5. Meetings shall be adjourned by a majority vote of the Commission or by the Chair when it appears that there is no further business.

The Commission, by a majority vote or consensus, may recess for a short break of specified duration.

The Commission, by a majority vote may continue meetings to a definite time and place.

Section 6. Special meetings may be held by the Commission subject to notice requirements prescribed by State law. Special meetings may be called using a written notice emailed or delivered to each member of the Commission at least forty-eight (48) hours before the time specified for the proposed special meeting. The written notice shall specify the purpose of the meeting and no other business can be conducted at that meeting. Special meetings may be called by the Chair, the City Council or Mayor, City Manager or designee, or by written request by any three (3) Commissioners.

Section 7. All meetings shall comply with the requirements of the Open Public Meetings Act (Chapter 42.30 RCW). All meetings shall be noticed and open to the public.

## **DISCUSSION ITEM 8a**

Section 8. Public Hearings are the only meetings that must meet legal noticing requirements, by advertising in the chosen local legal notice paper, ten (10) days prior to the scheduled meeting, unless city code or state law requires other or additional notice.

### **ARTICLE VI ORDER OF BUSINESS AND PUBLIC COMMENT**

Section 1. The order of business for each regular meeting of the Commission shall be as follows:

1. Call to order
2. Flag salute
3. Roll call
4. Approval of agenda order
5. Approval of minutes
6. General public comments on items not on the agenda
7. Public Hearings (if necessary)
  - a. Chair opens hearing
  - b. Staff presentation
  - c. Commission questions regarding the staff presentation and report
  - d. Applicant testimony (if there is an applicant)
  - e. Public testimony
  - f. The Chair may allow further testimony. Commissioners may ask any questions it may have of the applicants, proponents, opponents, the public, or staff.
  - g. The Chair calls for a motion to close the public hearing. After hearing is closed, no further testimony shall be allowed.
  - h. Planning Commission deliberates and takes a vote on a recommendation to the City Council.
8. Discussion items (if any)
  - a. Staff presentation
  - b. Commission questions
  - c. Public comments
9. Director's report
10. Adjournment

Section 2. The public shall be allowed to express its views during three public comment periods at Planning Commission meetings: "General Public Comments", "Public Hearing Testimony", and "Discussion Item Public Comments".

During General Public Comments, the Planning Commission will take public comment on any subject which is not specifically scheduled for later on the agenda. Public Hearing Testimony and Discussion Item Public Comments will follow the presentation of each staff report and Commission questions. During Public Hearing Testimony the testimony of the applicant, if any, shall be heard first.

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In all cases, speakers shall be asked to come to the podium to have their comments recorded. Each speaker is to state their first and last name and city of residence. Each speaker may speak for three (3) minutes or less, except, subject to due process requirements, an applicant may speak for ten (10) minutes or less. Speakers may not give their time to another speaker.

A speaker may be allowed to speak a second time on the same subject only after all other public testimony has been received and only if approved by a majority vote of the members present.

### **ARTICLE VII WORK PLAN**

Section 1. A work plan for the calendar year shall be prepared and presented by the Planning Director to the Planning Commission at the first meeting of each calendar year. The work plan shall, at a minimum, include a tentative schedule of meetings and topics for the calendar year. The Planning Commission shall discuss the proposed work plan and members may suggest adding and/or deleting items from the work plan.

Section 2. By vote of a majority of the members present at the meeting the Planning Commission shall approve the work plan, which will serve as an organizational and scheduling tool but shall not be binding and shall not serve to limit items brought before the Planning Commission for their consideration.

### **ARTICLE VIII CONFLICT OF INTEREST AND APPEARANCE OF FAIRNESS**

Section 1. Conflict of Interest: Whenever any member of the Planning Commission has a conflict of interest with respect to any matter on a Commission agenda, the member shall voluntarily excuse himself or herself from further participation in the discussion and consideration of the matter and shall vacate his or her seat and leave the Commission chambers until all proceedings with respect to the matter at that meeting are concluded. The member shall further refrain from discussing the matter with any other Commissioner, or from attempting to influence any other Commissioner with respect to the matter, outside the meeting. For purposes of this section, conflict of interest is defined as a situation in which a reasonable person would conclude that the member's independent judgment would be impaired by the member's direct or indirect financial or other interest in the matter. It shall include, at a minimum, the conflicts described in RCW Chapter 42.23 – Code of Ethics for Municipal Officers, Contract Interests, as the same exists or as may hereinafter be amended and developed.

Section 2. Appearance of Fairness: Whenever the continued participation of any member of the Commission would violate the appearance of fairness doctrine, that

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member shall excuse himself or herself from further participation in the discussion or consideration of the matter and shall vacate his or her seat and leave the Commission chambers until all further proceedings with respect to the matter at that meeting have been concluded. The member shall further refrain from discussing the matter with any other Commissioner, or from attempting to influence any other Commissioner with respect to the matter, outside the meeting. For purposes of this Section, the appearance of fairness doctrine means that legal doctrine relating to quasi-judicial matters which has been developed by the courts and by the legislative enactment of RCW Chapter 42.36, as the same exists or as may be hereinafter amended and developed.

### **ARTICLE IX** **AGENDA PACKET DELIVERY**

Completed packets, including staff reports, shall be finalized at least one (1) week preceding the day of a regular meeting but not less than twenty-four (24) hours prior to a special meeting. When finalized, completed packets shall be made available to Commissioners and the public via the City website or paper copies may be obtained at City Hall during normal business hours.

### **ARTICLE X** **AMENDMENTS**

These bylaws may be amended at any meeting of the Planning Commission by a favorable vote of not less than five (5) of the seven (7) Planning Commission members, provided that notice of said proposed amendment is given to each member in writing at least two (2) weeks prior to said meeting, and said amendment is presented to and approved by the City Council.

APPROVED this 7<sup>th</sup> day of December 2016.

SIGNED BY:

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Laura Scott  
Chair, Planning Commission

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Glen Pickus, AICP  
Planning Director, City of Snohomish



## **DISCUSSION ITEM 8b**

**Date:** December 7, 2016  
**To:** Planning Commission  
**From:** Glen Pickus, Planning Director  
**Subject:** **Annual Report to City Council**

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**SUMMARY:** Snohomish Municipal Code 2.16.060 states, “The Planning Commission shall provide an annual report to the City Council on its activities for the previous year ...” Staff has drafted an annual report for the Commission to review and comment on before it is sent to the City Council.

**BACKGROUND:** Staff has drafted a report to comply SMC 2.16.060. The code does not provide any specific guidance as to what information the report should contain other than to state “on its activities”. Staff chose to primarily highlight Commission activities that required a Commission vote. As this is a report from the Planning Commission, Commissioners should feel free to suggest revisions and or additions to the report. When a final version is agreed upon the report will be forwarded to the City Council for their information.

**RECOMMENDATION:** Motion to ADOPT the 2016 Planning Commission Annual report as presented [as discussed] and to forward it to the City Council as required by SMC 2.16.060.

**ATTACHMENT:** 2016 Annual Report to City Council (draft)

## **DISCUSSION ITEM 8b**

### **Draft Planning Commission 2016 Annual Report to City Council**

Despite a change in leadership of the City's Department of Planning & Development Services and the uncertainty that created, 2016 was a productive year for the Planning Commission. We had ten meetings, although at one meeting we did not have a quorum.

The first part of the year the Commission worked on a code amendment to adopt comprehensive regulations for wireless telecommunications facilities. In February, we held a public hearing after which the Commission recommended City Council approval of the proposed amendment.

In June, two public hearings were held. One was to consider a code amendment ordinance to allow for deferred collection of park, traffic, and school impact mitigation fees. This code amendment was necessary to comply with recent State legislation. The second hearing was to consider a code amendment that created a new land use called "community-based theaters". The amendment allows community-based theaters to be located in single family residential zones with a conditional use permit. The Commission recommended City Council approval of both ordinances.

Also at the June meeting, the Planning Commission approved a values statement in response to the Open Government Committee's recommendation to ensure consistency between the values of the various City boards and commissions.

At our August meeting, we were introduced to the City's new Planning Director.

During the second half of the year, the Planning Commission focused its efforts primarily on state-mandated code amendments related to stormwater regulations and encouraging the use of low impact development best management practices. This included creating a new chapter in Snohomish Municipal Code to regulate clearing and grading. Also included was adoption of the Washington State Department of Ecology's 2012 Stormwater Management Manual for Western Washington. After two workshops, a public hearing was held in October after which the Commission recommended City Council approval of the code amendments and adoption of the stormwater manual.

In November, a public hearing was held to consider the sole 2016 docket item. That item was a request to amend the Comprehensive Plan by changing the land use designation for 2501 Bickford Ave. to High Density Multi-family Residential from Business Park. The Planning Commission recommended the City Council approve the request.

In December, we elected new officers for 2017. We also reviewed and adopted bylaws for the Planning Commission as provided for in SMC 2.16.060.

Respectfully submitted,

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Laura Scott, Chair  
Snohomish Planning Commission

## **DISCUSSION ITEM 8c**

**Date:** December 7, 2016  
**To:** Planning Commission  
**From:** Brooke Eidem, Associate Planner  
**Subject:** Development Agreements

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**SUMMARY:** This agenda item provides for the Planning Commission's discussion of an upcoming code amendment to provide for development agreements. A development agreement is a voluntary contract between a local jurisdiction and a property owner regarding future development of a specific site. The agreement details the obligations of both parties and specifies standards and conditions for development. For property owners, development agreements provide assurance the regulations that apply to the project will not change. Development agreements allow the City to apply conditions and mitigation for project impacts, impose design standards beyond what the code provides for, and can include clarification about project phasing or public improvements.

**BACKGROUND:** RCW 36.70B provides the statutory authority and legal requirements for development agreements. Entering into a development agreement is entirely voluntary. However, once agreed upon its provisions become binding. A development agreement establishes site-specific development standards. The development standards can deviate from the standards established in the municipal code. Development agreements can also provide for other provisions such as expedited processing of permits, phasing, vesting, and mitigation requirements. Development agreements require at least one public hearing and must be approved by the City Council.

Development agreements are a tool the City can use to have more control over the quality of a development's design. It provides flexibility from codified development regulations allowing the City to relax some rules (frequently setbacks, street widths) while imposing stricter rules that result in higher quality developments. The stricter rules can cover just about anything but frequently address exterior building design, public amenities, streetscapes, and community spaces.

One important benefit for property owners that a development agreement can provide is the establishment of vested rights. Currently, vested rights are an area of concern for developers because a recent court case (*Potala Village LLC, v. City of Kirkland*) found that vested rights only exist if codified. Currently, in the City the only codified vested rights are for building permits and subdivisions (both formal and short). If Snohomish Municipal Code is amended to provide for development agreements then development agreements would be another way to establish vested rights.

**PROPOSAL:** Code language will be drafted to provide an option for entering into a development agreement with the City. The applicable RCW provides several areas of discretion for cities when providing for development agreements such as the process for approving them,

### **DISCUSSION ITEM 8c**

how long the agreements can be in effect, and what sections of existing code can be modified by a development agreement.

**NEXT STEPS:** Early in 2017 staff will bring to the Planning Commission draft code language for its review and input. Following that, a public hearing will be held to consider a final draft ordinance providing for development agreements.

## **DISCUSSION ITEM 8d**

**Date:** December 7, 2016  
**To:** Planning Commission  
**From:** Glen Pickus, Planning Director  
**Subject:** Fence Code Amendment

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**SUMMARY:** Current regulations do not allow fences to be built in the right-of-way except when it is in a residential land use designation and when the right-of-way is in excess of 60 feet wide. A strict reading of the code prevents many residential uses from having a fence in the right-of-way when it appears that is not the intent of the code.

**BACKGROUND:** Several non-residential land use designations allow residential uses including the Historic Business District, Commercial, Neighborhood Business, and Mixed Use areas. It would be appropriate to allow fences in the right-of-way those areas but the code prevents that.

In addition, the typical width of right-of-way for local streets is 60 feet. Therefore, in many residential areas fences cannot be allowed in the right-of-way because the right-of-way is not “in excess of 60 feet”.

This issue came to the attention of staff when responding to a call about a street sign that was knocked down. The resident who called in was in the process of installing a fence partially in the right-of-way in order to create a secure front yard. However, because she lives in a dwelling unit in the Historic Business District she was told the fence could not encroach into the right-of-way. The resident spoke to the City Council at their Oct. 18, 2016 meeting asking for a code amendment to allow her to build a fence in the right-of-way. Council directed staff to work with her to resolve the issue.

**PROPOSAL:** Staff believes the intent of the existing regulations is to allow residential uses to be able to build fences in the right-of-way. However, the use of the term “residential designation” does not reflect that intent.

Similarly, staff believes the intent was to allow fences in the right-of-way when the right-of-way width was at least 60 feet. However, the use of the term “in excess of 60 feet” does not reflect that intent.

With direction from the Planning Commission, staff would like to work on a code amendment to “correct” the wording. At the same time, staff would also like to address and correct other issues in SMC 14.240.060. Other issues will include clarifying how the height of fences is to be measured and how the height of fences on top of rockeries or retaining walls should be measured.

**NEXT STEPS:** Staff will analyze, research, and draft amendments to SMC 14.240.060 to correct the wording regarding fences in the right-of-way and to address other issues staff identifies as needing correction and bring those amendments to the Planning Commission for its review and input.

**ATTACHMENT:** SMC 14.240.060

**SMC 14.240.060**

- A. General regulations. Installation of fences and walls, except for public utility purposes, shall comply with the following general requirements:
1. The two sets of Design Standards adopted by the City of Snohomish: the *Design Standards and Guidelines for the City's Historic District* and the *Design Standards and Guidelines for Areas Outside of the Historic District* will apply.
  2. Except for property designated Single Family outside of the Historic District, a building permit issued by the Building Official is required for installation. Plans and specifications may also be required for permit approval.
  3. All fences and walls must meet the requirements for height, setback, sight obstruction, maintenance, and special location provisions as set forth in this section. The type, size, location, and height of fencing proposed for tennis courts, parks, or athletic fields shall be categorically exempt from the requirements outlined in this chapter and will be reviewed and approved by the Planning and Development Services Department on a project-by-project basis.
  4. No fence shall create a safety hazard or sight obstruction in accordance with SMC 14.210.160.
  5. Fence height is based on elevation from ground level.
  6. No fences or walls shall be allowed in the public right-of-way except under the following conditions:
    - a. The proposed fence is in a residential land use designation.
    - b. The right-of-way is in excess of sixty (60) feet.
    - c. No safety or vision problem is created for vehicular or pedestrian traffic.
    - d. There will be no obstruction to the operation of utility equipment and the maintenance of utility lines.
    - e. The fence will be located on the non-street side of the sidewalk.
    - f. The property owner shall execute and record an agreement to maintain and remove the fence at the owner's expense if required by the City or other public utility in order to work in the right-of-way.
  7. Electric fences shall be a minimum of two (2) feet from the property line.
- B. Electrical fences. Electrical fences shall comply with the following:
1. Use an interrupted flow of current at intervals of one second on and two seconds off.
  2. Be limited to two thousand (2,000) volts at seventeen (17) mill amperes current.
  3. Require an "U.L. Approved" seal.
  4. Be posted with permanent signs with a minimum area of thirty-six (36) square inches at intervals of fifty (50) feet stating that the fence is electrified.

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- C. Residential and public land use designation area regulations. Fences constructed in residential and public land use designation areas shall comply with the following requirements:
  - 1. Barbed wire is prohibited.
  - 2. Within Front Setback.
    - a. Solid Fence. No higher than three (3) feet unless it connects side fences to the structure.
    - b. Open Fence. Up to five (5) feet if it does not create a sight obstruction.
  - 3. Within Rear Yard Setback. Any type fence no higher than six (6) feet.
  - 4. Within Side Yard Setback. Any type fence no higher than six (6) feet except on the street side of a corner lot where a fence must meet the sight clearance for intersections set forth in SMC 14.210.160.
- D. Commercial and industry land use designation area regulations. Fences constructed in commercial and industry land use designation areas shall comply with the adopted Design Standards which apply in these areas.
- E. Urban horticulture land use designation area. Fences constructed in urban horticulture land use designation areas may be of any suitable material no higher than seven (7) feet on any part of the lot.
- F. Historic District. Fences constructed in the Historic District shall comply with the *Design Standards and Guidelines for the City's Historic District*.
- G. Retaining walls.
  - 1. Retaining wall installations in all land use designation areas must comply with the adopted City of Snohomish Design Standards which apply within said areas.
    - a. Except as otherwise provided below, retaining wall permits shall be required for all retaining walls. The permit application must include a site plan, drawn to scale which shows:
      - i. The whole property and the property lines;
      - ii. At least 50 feet of all adjacent properties, as measured from the proposed retaining wall;
      - iii. All structures, including existing retaining walls, within 50 (fifty) feet of the proposed wall;
      - iv. Existing topography with contour lines at 2-foot vertical intervals.  
Topographical data obtained from public records is acceptable.
      - v. The materials proposed for use in construction;
      - vi. The location of the proposed wall with all dimensions necessary to describe its location;
      - vii. A cross-section showing the wall and provisions for drainage.
    - b. Building permits, in addition to retaining wall permits, are required for all

## **DISCUSSION ITEM 8d**

retaining walls greater than four feet in height.

- c. No private retaining wall may be located in City rights-of-way except as may be otherwise provided in the Snohomish Municipal Code.
- d. The height of a retaining wall shall be measured from the lowest part of the wall or wall footing to the highest part of the wall at every location along the wall.
- e. No part of a retaining wall may extend into an adjacent lot.
- f. Guardrails placed at the top of retaining walls, pursuant to the Uniform Building Code, shall be permitted as part of the wall, and shall not be considered to be a fence or part of the wall height.
- g. A retaining wall may terminate at a property line, provided that it must abut a retaining wall on the adjacent property and is structurally independent from such wall.

### **2. Exemptions.**

- a. No permits shall be required for walls two feet or less in height.
- b. The City may waive the requirement for a retaining wall permit when:
  - i. Every part of the wall is set back at least five feet from all property lines;
  - ii. The wall is no greater than four feet in height;
  - iii. The wall does not affect the structural integrity of adjacent structures;
  - iv. Such waiver is made in writing by the City Planner or designee.
- c. No permits shall be required for retaining walls within new plats that are reviewed and approved by the City as part of the plat improvements.

### **3. Variances. The provisions of Chapter 14.70 SMC shall apply to requests for variances from the requirements of this chapter.**